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Attorneys for Plaintiff
 Mercy Mesiano

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

<p>MERCY MESIANO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ERICA L. BRACHFELD, THE LAW OFFICES OF BRACHFELD & ASSOCIATES, P.C.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 09 CV 01046 MMA (BLM)</p> <p>JOINT DISCOVERY PLAN PURSUANT TO F.R.C.P. 26(f)</p> <p>Hon. Barbara L. Major</p> <p>DATE: September 11, 2009 TIME: 9:00 AM</p>
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Plaintiff MERCY MESIANO (“Plaintiff”) and Defendants ERICA L. BRACHFELD, THE LAW OFFICES OF BRACHFELD & ASSOCIATES, P.C. (“Defendants”) jointly submit this report in accordance with Rule 26(f) of the Federal Rules of Civil Procedure.

DATE AND PLACE OF MEETING AND
IDENTIFICATION OF PARTIES AND THEIR ATTORNEYS

1. The date and place at which the meeting was held.

The Rule 26(f) meeting took place on August 26, 2009, at 4:00 PM. Plaintiff was represented at the Rule 26(f) meeting by Tiffany Jensen of Hyde & Swigart,

located at 411 Camino Del Rio South, Suite 301, San Diego, CA 92108-3551 (Telephone 619-233-7770). Defendants were represented at the Rule 26(f) meeting by Charles Messer of Carlson and Messer LLP, located at 5959 W. Century Boulevard, Suite 1214, Los Angeles, CA 90045 (Telephone: 310-242-2200).

2. Name of insurance carriers that may be liable for the defense or payment of any damage award.

Plaintiff – None.

Defendant Erica Brachfeld – Mercury Insurance.

Defendant The Law Offices of Brachfeld & Associates, P.C. - Mercury Insurance.

DESCRIPTION OF THE CASE

1. A concise statement of the jurisdictional basis of the case, giving statutory citation and a brief narrative description.

Plaintiff contends that jurisdiction of this Court arises under 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1367 for pendent state law claims. Plaintiff alleges that this action arises out of Defendant's alleged violations of California's Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. ("RFDCPA"), and the Fair Debt Collection Act ("FDCPA"), 15 U.S.C. §1692 et seq.

Defendant Erica Brachfeld – Defendant Erica Brachfeld denies it violated either the FDCPA or the RFDCPA as alleged by Plaintiff.

Defendant The Law Offices of Brachfeld & Associates, P.C. – Defendant Law Offices of Brachfeld & Associates denies it violated either the FDCPA or the RFDCPA as alleged by Plaintiff.

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1 **2. A brief narrative of the facts giving rise to this lawsuit, including a**
2 **description of legal claims and defenses.**

3 **Plaintiff's Statement of the Case:** Plaintiff alleges that Defendant engaged
4 in actions that define Defendants as a debt collectors under the RFDCPA and
5 FDCPA. Plaintiff alleges that Defendants acting in this capacity committed
6 multiple violations of Cal. Civ. Code § 1788 et seq. and 15 U.S.C. § 1692 et seq.
7 including but not limited to discussing Plaintiff's alleged debt and private financial
8 information with several third parties and his commanding officers and/or
9 supervisors.

10 **Defendant Erica Brachfeld's Statement of the Case:** Defendant Erica
11 Brachfeld denies that it violated any provision of the FDCPA or RFDCPA in its
12 attempted collection of the debt at issue.

13 **Defendant The Law Offices of Brachfeld & Associates' Statement of the**
14 **Case:** Defendant Law Offices of Brachfeld & Associates denies that it violated any
15 provision of the FDCPA or RFDCPA in its attempted collection of the debt at issue.

16 **3. A summary itemization of the dollar amount of each element of the**
17 **alleged damages.**

18 Plaintiff claims damages as follows:

- 19 a. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an
20 amount to be adduced at trial, from each Defendant;
21 b. An award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. §
22 1692k(a)(2)(A) from Defendant for each Plaintiff;
23 c. An award of costs of litigation and reasonable attorney's fees, pursuant to
24 15 U.S.C. § 1692k(a)(3) from Defendant for each Plaintiff.
25 d. Statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b)
26 against each Defendant;
27 e. Actual damages pursuant to Cal. Civ. Code §1788.30(a) against each
28 Defendant;

- 1 f. Costs of litigation and reasonable attorney's fees pursuant to Cal. Civil
2 Code § 1788.30(c);
3 g. Any other relief this Court deems just and proper.

4 **PLEADINGS**

- 5 **1. A statement of whether the Complaint and all responsive pleadings have**
6 **been filed, and whether any party proposes to amend its pleadings.**

7 **Plaintiff** – Plaintiff's Complaint has been filed with the Court. Plaintiff does
8 not contemplate amending her pleadings at this time.

9 **Defendant Erica Brachfeld** – Defendant Erica Brachfeld has filed its
10 Answer with the Court and does not contemplate amending its pleading at this time.

11 **Defendant The Law Offices of Brachfeld & Associates** – Defendant Erica
12 Brachfeld has filed its Answer with the Court and does not contemplate amending
13 its pleading at this time.

- 14 **2. The date by which all motions that seek to amend the pleadings or add**
15 **parties will be filed.**

16 The parties do not presently contemplate amending their pleadings at this
17 time.

- 18 **3. Whether a jury trial is available under the law, and whether a jury trial**
19 **has been timely demanded.**

20 Plaintiff and Defendant have each made a timely request for a jury trial.

21 **DISCOVERY PLAN**

- 22 **1. Date by which the initial Rule 26(a)(1) disclosures of witnesses,**
23 **documents, itemized damage computations and insurance will be**
24 **completed (if not already completed).**

25 September 2, 2009, as ordered by the Court.

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2. Statement of efforts which have been made to settle or resolve the case to date.

The parties engaged in Early Neutral Evaluation. The case did not settle. Further settlement negotiations may be fruitful after initial discovery is responded to.

3. Whether the parties wish to engage in any method of alternative dispute resolution following Rule 26(a)(1) disclosures but before formal discovery is commenced.

The parties have participated in settlement negotiations at the ENE Conference. The parties are open to further settlement negotiations facilitated by the court.

4. Whether discovery should be conducted in phases, or limited to or focused upon, particular issues.

Discovery is currently contemplated on all issues framed by the pleadings. Discovery should not be conducted in phases or limited, except as set forth in the F.R.C.P. and only after the parties or the Court might have agreed to any such limitation.

5. The date by which each party shall disclose the identity of expert witnesses and their reports under Rule 26(a)(2)(A) and (B).

1st Expert Exchange – April 2, 2010

2nd Expert Exchange – May 3, 2010

CLOSE OF DISCOVERY AND NON-DISPOSITIVE MOTIONS

1. The date by which all fact discovery shall be completed and all non-dispositive motions, excluding discovery motions, shall be filed and served.

June 7, 2010

2. The date by which all expert discovery shall be completed.

July 9, 2010

DISPOSITIVE MOTIONS AND TRIAL

1. Date by which all dispositive motions shall be filed.

August 9, 2010

2. Date by which case will be ready for trial.

October 4, 2010

3. Estimated trial time (including jury selection and instructions, if applicable).

The trial of this matter should last no more than 3-4 days.

Dated: September 1, 2009

Hyde & Swigart

By: s/Joshua B. Swigart
Joshua B. Swigart, Esq.
Attorneys for Plaintiff

Dated: September 2, 2009

Carlson & Messer LLP

By: s/Charles R. Messer
Charles R. Messer, Esq.
Attorney for Defendants

HYDE & SWIGART
San Diego, California